



HARMONIZED SYSTEM
COMMITTEE

NC0039E1

-
23rd Session

O. Eng.

H3-1

Brussels, 21 April 1999.

POSSIBLE AMENDMENT TO THE EXPLANATORY NOTE TO HEADING 17.04

CONCERNING "DETECTABLE" COCOA CONTENT

(Item VIII.1 on Agenda)

Reference documents :

42.035 (HSC/22)
42.750, Annex H/1, (HSC/22 - Report)
42.806 (SSC/14)
42.850, Annex A/14, (SSC/14 - Report)
NC0016E1, paragraphs 30 to 34 (HSC/23)
NC0018E1 (HSC/23)

I. BACKGROUND

1. During its 22nd Session (November 1998) the Harmonized System Committee discussed the classification of sugar confectionery containing minute quantities of cocoa, on the basis of Doc. 42.035.
2. The question before the Committee was whether the presence of trace amounts of cocoa, which were said to be present for technical reasons, should be tolerated for products of heading 17.04 or whether these products should be classified in Chapter 18 even when the presence of cocoa was not detected by laboratory analysis.
3. With regard to the classification of the products at issue, it was pointed out that according to Note 1 (a) to Chapter 17, sugar confectionery containing cocoa was excluded from Chapter 17 and classified in heading 18.06. The General Explanatory Note to heading 18.06 amplified this provision, indicating that preparations containing cocoa, in any proportion, were classified in Chapter 18.
4. Some delegates, therefor, argued that classification should be based on a strict interpretation of Note 1 (a) to Chapter 17 and, since the products were indicated to contain cocoa, they should be classified in heading 18.06.

File No. 2729

5. However, the Committee decided to classify the products in question in heading 17.04. The Committee agreed that the above decisions took account of the manufacturer's information that the products, for technical reasons, contained minute quantities of cocoa (i.e. 0.015 % to 0.057 %), but were made on the basis that cocoa had not been detected with certainty by the Customs laboratories consulted. Consequently, the products could not be regarded as containing cocoa to justify their classification in heading 18.06 by application of Note 1 (a) to Chapter 17.
6. To reflect the Committee's decisions, the Secretariat was instructed to prepare draft Classification Opinions (see item VII.1 on the Agenda).
7. With regard to future action concerning prescribing a possible upper limit of cocoa content for products of heading 17.04, the Committee agreed to request the Scientific Sub-Committee to consider a threshold for detectable cocoa content in sugar confectionery and the analytical method to be applied in that connection (see item V.2 on the Agenda).
8. The Committee also agreed to a suggestion by the Delegate of Brazil to examine possible amendments to the Explanatory Note to heading 17.04 (e.g., exclusion (b)) to refer to "detectable" cocoa content. The Brazilian Administration was invited to submit a proposal in writing for consideration by the Committee at its next session.

II. SECRETARIAT COMMENTS

9. By the time of the preparation of this document, no proposal has been received from the Brazilian Administration by the Secretariat. The Secretariat is of the view that item (vi) and exclusion (b) of the Explanatory Note to heading 17.04, together with the proposed Classification Opinion provide practical guidelines to the present classification of these products and that it would not be necessary to propose amendments to the Explanatory Note to heading 17.04 at this stage.

III. CONCLUSION

10. The Committee is invited to examine whether any amendment to the Explanatory Note to heading 17.04 concerning "detectable" cocoa content is necessary, taking the above comments into account.
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